



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/431,357	11/01/1999	PRASAD Y. CHEBROLU	2705-92	8571

7590 11/10/2003

MARGER JOHNSON & MCCOLLOM PC
1030 SW MORRISON STREET
PORTLAND, OR 97205

EXAMINER

CALDWELL, ANDREW T

ART UNIT

PAPER NUMBER

2157

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/431,357	CHEBROLU, PRASAD Y.
	Examiner Andrew Caldwell	Art Unit 2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 September 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-9 and 11-17 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-9 and 11-17 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s) _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

1
2

Remarks

3 Claims 1-9 and 11-17 are pending.

4

5 **Specification**

6 The abstract of the disclosure is objected to because it does not describe the
7 nature or gist of the claimed invention. The abstract says nothing about the scheduling
8 function nor does it address the newly presented limitations that the associated
9 channels carry incoming digital or analog traffic. Correction is required. See MPEP
10 § 608.01(b).

11

12 **Claim Rejections - 35 USC § 103**

13 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
14 obviousness rejections set forth in this Office action:

15 (a) A patent may not be obtained though the invention is not identically disclosed or described as set
16 forth in section 102 of this title, if the differences between the subject matter sought to be patented and
17 the prior art are such that the subject matter as a whole would have been obvious at the time the
18 invention was made to a person having ordinary skill in the art to which said subject matter pertains.
19 Patentability shall not be negated by the manner in which the invention was made.

20

21

22

23

24 Claims 1-4, 8, 11, and 16-17 are rejected under 35 U.S.C. 103(a) as being
25 unpatentable over White et al., U.S. Patent No. 5,933,490, in view of Fratto, M.,
26 More than Throughput: Managed Modem Chassis, Network Computing, vol. 7, no.
27 17, pp. 1-5, Nov. 1996, and further in view of Carson et al., U.S. Patent No.
28 4,629,832, and further in view of Service Provider Dial Scenarios and

1 Configurations,

2 www.cisco.com/univercd/cc/td/doc/product/software/ios113ed/113ed/cr/dial_c/dcprt0

3 /dcspex.pdf, pp. DC13 to DC56, January 1998, hereinafter "the Cisco Reference."

4 Regarding claim 1, the preamble will be given patentable weight since the claim
5 body refers back to the preamble at line 6. See *the service request switch*. White
6 teaches the invention substantially as claimed by disclosing an access server (Fig. 7
7 elems. 96 & 98) having associated channels (Fig. 7 elem. 94) carrying incoming
8 digital or analog traffic (col. 15 lines 15-16), the access server being operatively
9 coupled with a service request switch (Fig. 7 elem. 54; Col. 15 lines 13-35).

10 White does not teach the method steps listed in lines 4-12 of claim 1.

11 Fratto on the other hand teaches an access server with the ability to busy out all
12 modems (i.e., associated channels) of a server when a system manager manually
13 initiates preventive maintenance (p. 3 5th complete paragraph). Fratto therefore
14 teaches the method step of a system manager manually determining whether off-line
15 maintenance is needed on a network access server and, if so, suggests the general
16 idea of busying out the modems/channels prior to taking the access server offline for
17 maintenance.

18 It would have been obvious to one of ordinary skill in the art at the time the
19 invention was made to combine the teachings of Fratto with the access server of
20 White because of Fratto's teaching that this capability is a *basic* modem
21 management function (p. 3 5th complete paragraph).

1 The combination of White in view of Fratto does not teach the specific steps of
2 busying out the system, which are:

3 Communicating a busy condition of any unused associated channel from
4 the network access server to the service request switch;

5 Monitoring any used associated channel for either of a digital and an
6 analog call thereon and waiting until the used associated channel becomes
7 substantially unused as indicated by defined digital and analog signaling
8 protocols comprehended by such monitoring;

9 When the unused associated channel becomes substantially unused as
10 indicated by such defined digital and analog signaling protocols comprehended
11 by said monitoring, communicating a busy condition of such then-unused
12 channel from the network access server to the service request switch;

13 Signaling that maintenance on the network access server can be
14 performed;

15 Automatically routing any new client service requests that may arrive
16 during a busy condition of the network access server to another network access
17 server operatively coupled with the service request switch.

18 Carson on the other hand teaches a method for busying out the channels of a
19 network device (Col. 10 line 56 to Col. 11 line 24), comprising:

20 Communicating a busy condition of any unused associated channel from
21 the network device to the service request switch (Col. 10 lines 57-61);

1 Monitoring any used associated channel for either of a digital and an
2 analog call thereon and waiting until the used associated channel becomes
3 substantially unused as indicated by defined digital and analog signaling
4 protocols comprehended by such monitoring (Col. 11 lines 9-12; Fig. 5 loop
5 between elem. 511 no path and elem. 520 no path shows the system looping or
6 waiting until the CO line is idle);

7 When the unused associated channel becomes substantially unused as
8 indicated by such defined digital and analog signaling protocols comprehended
9 by said monitoring, communicating a busy condition of such then-unused
10 channel from the network access server to the service request switch (Fig. 5
11 elems. 510-513; Col. 10 line 56 to Col. 11 line 16);

12 Signaling that maintenance on the network device can be performed (Col.
13 11 lines 12-16 audible alert).

14 It would have been obvious to one of ordinary skill in the art at the time the
15 invention was made to modify the combination of White in view of Fratto by
16 substituting Carson's specific teachings for busying out a network device for the
17 combination's general teaching of busying out the network access server, thereby
18 teaching the invention as claimed. This combination would have been obvious
19 because of Carson's teaching that its method reduces interruptions to users of the
20 system (Col. 1 lines 19-24).

21 The combination of White in view of Fratto and further in view of Carson does not
22 teach a method wherein new client service requests that may arrive during a busy

1 condition of the network access server are automatically routed to another network
2 access server operatively coupled with the service request switch.

3 The Cisco reference on the other hand teaches a system wherein the channels
4 of a hunt group are allocated across multiple access servers (p. DC-28 Fig. 13).

5 It would have been obvious to one of ordinary skill in the art at the time the
6 invention was made to spread the channels of the hunt group of the combination of
7 White in view of Fratto and further in view of Carson as taught by the Cisco
8 reference because doing so would increase the reliability of the system. In such a
9 system, any new client service requests that may arrive during a busy condition of
10 the network access server are automatically routed another network access server
11 operatively coupled with the service request switch. The combination of White in
12 view of Fratto and further in view of Carson and further in view of the Cisco
13 Reference therefore teaches the invention as claimed.

14 Regarding claim 2, the combination of White in view of Fratto and further in view
15 of Carson and further in view of the Cisco Reference teaches the invention
16 substantially as claimed. See the rejection of claim 1 above. The combination as
17 applied to claim 1 above does not teach the additional step of claim 2. Carson on
18 the other hand teaches a method, which after completion of the maintenance, further
19 comprises communicating an idle condition of any associated channel to the service
20 request switch (Col. 1 lines 51-54). It would have been obvious to one of ordinary
21 skill in the art at the time the invention was made to combine Carson's teaching
22 regarding returning the state of the channels to idle after completing maintenance

Art Unit: 2157

1 with the method of the combination of White in view of Fratto and further in view of
2 Carson and further in view of the Cisco Reference because returning the channels to
3 the idle state allows the network access server to receive calls again, and thereby
4 perform its intended function.

5 Regarding claim 3, the combination of White in view of Fratto and further in view
6 of Carson and further in view of the Cisco Reference, as applied to claim 2 above,
7 teaches the invention substantially as claimed. The combination of White in view of
8 Fratto and further in view of Carson and further in view of the Cisco Reference does
9 not explicitly teach the additional limitation of claim 3. White does however teach
10 that the central office switching system is connected to the access server via POTS
11 or plain old telephone service connections (Col. 15 lines 13-16). Official notice is
12 hereby taken of the fact that POTS connections use a standard signaling protocol to
13 communicate the status of associated channels. White therefore teaches a system
14 in which a standard communication protocol is used to communicate between the
15 network access server and the service request switch. It would have been obvious
16 to one of ordinary skill in the art at the time the invention was made to use the
17 standard signaling protocol to communicate the busy/idle condition of any
18 associated channel of the network access server to the switch because doing so
19 increases the interoperability of the network access server, allowing it to be
20 connected to the switches of different manufacturers.

21 Regarding claim 4, the combination of White in view of Fratto and further in view
22 of Carson and further in view of the Cisco reference as applied to claim 1 above

Art Unit: 2157

1 teaches a system in which both network access servers are in the same hunt group.

2 See the discussion of the Cisco Reference above.

3 Regarding claim 8, it is a method claim similar in scope to claim 2 but uses
4 slightly different terminology. Claim 8 is directed to a method for temporarily taking a
5 network access server offline for service while claim 2 is directed to a method for
6 performing maintenance. Claim 8 has no step corresponding to claim 2's step of
7 determining whether off-line maintenance is needed. So in this sense, claim 8 is
8 broader. Claim 8 refers to busying out any unused channels while claim 2 refers to
9 communicating a busy condition of any associated channels. Claim 8 refers to
10 awaiting substantial non-use while claim 2 refers to monitoring. Although claims 2
11 and 8 differ in scope, there is subject matter, such as the combination of White in
12 view of Fratto and further in view of Carson and further in view of the Cisco
13 Reference as applied to claim 2, that falls within the scope of both claims.

14 Accordingly, separate reasons for rejection are not necessary here, and the
15 Applicant is directed to the remarks above with respect to claim 2.

16 As to claim 11, Carson teaches a method further comprising scheduling the
17 service manually by command to the given access server (Col. 9 lines 42-45).

18 Regarding claims 16, it is a computer-readable medium claim corresponding to
19 method claim 1. Since it does not teach or define above the information in the
20 corresponding method claim, it is rejected under the same basis.

21 Regarding claim 17, it was not amended in the response to the last Office action
22 and is therefore rejected for the reasons given in the last Office action.

1
2 Claims 5-7, 9, and 12-15 are rejected under 35 U.S.C. 103(a) as being
3 unpatentable over White in view of Fratto and further in view of Carson, and further
4 in view of the Cisco Reference, and further in view of Fratto, M., Accessing the
5 Enterprise: Large-Scale RAS to the Rescue, Network Computing, pp 1-8, April,
6 1999, hereinafter Fratto II.

7
8 Regarding claim 5, the preamble will be given patentable weight since the claim
9 body refers back to the preamble. See the telco switch at line 6. White teaches the
10 invention substantially as claimed by disclosing an apparatus comprising a network
11 access server Fig. 7 elems. 96 & 98) operatively coupled with a telephone company
12 (telco) switch (Fig. 7 elem. 94).

13 White does not teach the remaining limitations of claim 5.

14 Fratto on the other hand teaches an access server with the ability to busy out all
15 modems (i.e., associated channels) of a server when a system manager manually
16 initiates preventive maintenance (p. 3 5th complete paragraph).

17 It would have been obvious to one of ordinary skill in the art at the time the
18 invention was made to combine the teachings of Fratto with the access server of
19 White because of Fratto's teaching that this capability is a *basic* modem
20 management function (p. 3 5th complete paragraph).

1 Although the combination of White in view of Fratto teaches a telco switch
2 coupled to an access server including a general busying out capability, the
3 combination of White in view of Fratto does not teach the specific limitations of:

4 A network access server upon which maintenance is being performed that
5 is within a given hunt group;

6 A scheduler for automatically scheduling off-line maintenance for a given
7 network access server upon the occurrence of one or more of a predetermined
8 condition and a predetermined time;

9 A channel usage monitor responsive to said scheduler for monitoring
10 usage of the associated channels of the given network access server;

11 A make-busy mechanism responsive to said channel usage monitor and
12 coupled with the telco switch for signaling the telco switch that all channels are
13 busy and whereby maintenance is performed on the given network access server
14 after said signaling and upon a determination by said channel usage monitor that
15 no channel is currently in use;

16 Automatically routing any new client service requests that may arrive
17 during a busy condition of the network access server to another network access
18 server operatively coupled with the service request switch and within the given
19 hunt group.

20 Carson on the other hand teaches a system comprising:

1 A channel usage monitor responsive to a *system administrator manually*
2 *initiating maintenance* for monitoring usage of the associated channels of the
3 given network access server (Col. 9 lines 42-45; Col. 11 lines 9-12);

4 A make-busy mechanism responsive to said channel usage monitor and
5 coupled with the telco switch for signaling the telco switch that all channels are
6 busy (Col. 10 lines 57-61) and whereby maintenance is performed on the given
7 network access server after said signaling and upon a determination by said
8 channel usage monitor that no channel is currently in use (Col. 11 lines 9-16).

9 It would have been obvious to one of ordinary skill in the art at the time the
10 invention was made to modify the combination of White in view of Fratto by
11 substituting Carson's specific teachings for busying out a network device for the
12 combination's general teaching of busying out the network access server, thereby
13 teaching the invention as claimed. This combination would have been obvious
14 because of Carson's teaching that its method reduces interruptions to users of the
15 system (Col. 1 lines 19-24).

16 The combination of White in view of Fratto and further in view of Carson does not
17 teach an apparatus wherein (a) new client service requests that may arrive during a
18 busy condition of the network access server are automatically routed to another
19 network access server operatively coupled with the service request switch and (b)
20 the network access server upon which maintenance is being performed that is within
21 a given hunt group.

1 The Cisco reference on the other hand teaches a system wherein the channels
2 of a hunt group are allocated across multiple access servers (p. DC-28 Fig. 13).

3 It would have been obvious to one of ordinary skill in the art at the time the
4 invention was made to spread the channels of the hunt group of the combination of
5 White in view of Fratto and further in view of Carson as taught by the Cisco
6 reference because doing so would increase the reliability of the system. In such a
7 system, any new client service requests that may arrive during a busy condition of
8 the network access server (i.e., while it is undergoing maintenance) are
9 automatically routed another network access server operatively coupled with the
10 service request switch. The combination of White in view of Fratto and further in
11 view of Carson and further in view of the Cisco Reference therefore teaches the
12 invention as claimed.

13 The combination of White in view of Fratto and further in view of Carson and
14 further in view of the Cisco Reference does not teach a system including a scheduler
15 for automatically scheduling off-line maintenance for a given network access server
16 upon the occurrence of one or more of a predetermined condition and a
17 predetermined time. As discussed above, the combination teaches a system in
18 which a system administrator manually initiates maintenance.

19 Fratto II on the other hand teaches a scheduler for automatically
20 scheduling off-line maintenance for a given network access server (p. 5 3rd
21 complete paragraph). Although Fratto II does not explicitly use the word automatic
22 to describe the operation of the scheduler, Fratto II does say that the scheduling

1 occurs without human personnel intervention after working hours. To one of
2 ordinary skill in the art, this statement would suggest that the scheduler operates
3 automatically. As to the limitation that the scheduler operate upon the occurrence of
4 one or more of a predetermined condition and a predetermined time, the mere use
5 of the word scheduling suggests that it operates at a minimum upon the occurrence
6 of a predetermined time. Time is the underlying notion behind a schedule. And the
7 claim language requires only one of a predetermined condition and a predetermined
8 time. Fratto II therefore teaches a scheduler for automatically scheduling off-line
9 maintenance for a given network access server upon the occurrence of one or more
10 of a predetermined condition and a predetermined time.

11 It would have been obvious to one of ordinary skill in the art at the time the
12 invention was made to combine Fratto II's scheduler with the system of the
13 combination of White in view of Fratto and further in view of Carson and further in
14 view of the Cisco Reference by having a scheduler automatically initiate
15 maintenance on the combination's access server by busying out the channels. This
16 combination would have been obvious because automating maintenance tasks
17 through use of a scheduler reduces labor costs.

18 Regarding claim 6, the combination of White in view of Fratto and further in view
19 of Carson and further in view of the Cisco Reference and further in view of Fratto II
20 teaches the invention substantially as claimed. See the rejection of claim 5 above.
21 The combination does not specifically teach the additional limitation of claim 6.
22 White does however teach that the central office switching system is connected to

1 the access server via POTS or plain old telephone service connections (Col. 15 lines
2 13-16). Official notice is hereby taken of the fact that POTS connections use a
3 standard signaling protocol to communicate the status of associated channels.
4 White therefore teaches a system in which a standard communication protocol is
5 used to communicate between the network access server and the service request
6 switch. It would have been obvious to one of ordinary skill in the art at the time the
7 invention was made to use the standard signaling protocol to communicate the
8 busy/idle condition of any associated channel of the network access server to the
9 switch because doing so increases the interoperability of the network access server,
10 allowing it to be connected to the switches of different manufacturers.

11 Regarding claim 7, a system wherein the signaling by the make busy mechanism
12 is performed via a standard communication protocol is also in accordance with
13 predefined network software, firmware, and hardware infrastructures. Software,
14 firmware, and hardware infrastructures make up the structure in which a network
15 protocol is implemented. In addition, a standard protocol is inherently predefined.
16 Accordingly, the remarks given with respect to claim 6 apply equally to claim 7.

17 Regarding claim 9, it is rejected for the reasons given below with respect to claim
18 12. Claim 12 specifies that the service command comes from a system
19 administrator software program. Claim 9 is silent as to the source of the service
20 command and is therefore broader. Since the remarks given below with respect to
21 the narrower claim apply equally to the broader claim, no separate reasons for
22 rejection will be given.

1 Regarding claim 12, the combination of White in view of Fratto and further in view
2 of Carson and further in view of the Cisco Reference, as applied to claim 8 above,
3 teaches the invention substantially as claimed.

4 The combination of White in view of Fratto and further in view of Carson and
5 further in view of the Cisco Reference does not explicitly teach the additional
6 limitation of claim 12.

7 Fratto II on the other hand teaches a scheduler for scheduling/initiating
8 off-line maintenance for a given network access server (p. 5 3rd complete
9 paragraph).

10 It would have been obvious to one of ordinary skill in the art at the time the
11 invention was made to combine Fratto II's scheduler with the system of the
12 combination of White in view of Fratto and further in view of Carson and further in
13 view of the Cisco Reference by having a scheduler automatically initiate
14 maintenance on the combination's access server by busying out the channels. This
15 combination would have been obvious because automating maintenance tasks
16 through use of a scheduler reduces labor costs.

17 Regarding claims 13-15, they were not amended in the response to the last
18 Office action and are therefore rejected for the reasons given in the last Office
19 action.

20
21
22

Response to Arguments

Applicant's arguments filed on September 8, 2003 (paper no. 10) have been fully considered but they are not persuasive.

4 The Applicant is arguing in substance the following: (a) that the references
5 individually fail to teach various features of the claimed invention; (b) Fratto II is not
6 enabling; (c) the combination fails to teach “anything about adapting analog ... call
7 handling and maintenance to mixed, analog ... and digital ... call handling and
8 maintenance in connection with one or more access servers and a router/switch; (d)
9 Fratto II is removed as prior art because the Applicant’s filed a declaration under 37
10 CFR 1.131.

11 As to point (a), the Applicant argues in the summary of the prior art teachings
12 that the references used in the rejection individually do not teach various features of the
13 claimed invention. See pages 9-10 of the response. In response to applicant's
14 arguments against the references individually, one cannot show nonobviousness by
15 attacking references individually where the rejections are based on combinations of
16 references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck &*

17 Co.

., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

18 As to point (b), the Applicant has not even made a *prima facie* case that Fratto II
19 is not enabling with respect to the scheduler. The Applicant is merely considering the
20 absence of a working example in Fratto II without considering the other factors in MPEP
21 2164.01(a) that are relevant to the question of enablement. It is improper to conclude
22 that a disclosure is not enabling based on an analysis of only one factor while ignoring

1 one or more others. In re Wands, 858 F.2d 737, 740, 8 USPQ2d 1404, 1407 (Fed. Cir.
2 1980).

3 As to point (c), the Applicant is arguing a limitation that does not appear in the
4 claim language. For example, the preamble of claim 1, which has been given
5 patentable weight, requires the associated channels may carry digital or analog calls.
6 The body of claim 1 requires the monitoring of any unused channel for either of a digital
7 and an analog call thereon. When these limitations considered together, claim 1 and its
8 dependent claims are directed to a method where the channels could be all digital, all
9 analog, or a mixture of digital or analog. The Examiner therefore fails to see a basis in
10 the claim language for the assertion that the claims are directed solely to a system that
11 includes a mixture of digital and analog incoming calls. Since, as the Applicants admit
12 in their response on page 9, that Carson teaches the forced busying of analog lines, the
13 combination of references renders obvious the claimed invention. Claims 8 and 16 all
14 contain similar language. If the Applicant considers the distinction between analog and
15 digital calls as the point of novelty between the claimed invention and the prior art, the
16 Applicant should consider the following in developing a response to this Office action.
17 First, page DC-13 of the Cisco Reference suggests that as of January 14, 1998 remote
18 access servers handling a mixture of digital and analog incoming calls was known in the
19 art. Second, if the distinction between analog and digital signaling protocols is so
20 significant that one of ordinary skill in the art at the time the invention was made would
21 not be able to infer the procedures necessary to busy out a digital channel using digital

1 signaling protocols from the corresponding operation of an analog channel, why is there
2 no explanation of this process in the Applicant's own specification?

3 As to point (d), the declaration filed on September 8, 2003 under 37 CFR 1.131
4 has been considered but is ineffective to overcome the Fratto II reference. The
5 evidence submitted is insufficient to establish a conception of the invention prior to the
6 effective date of the Fratto II reference. While conception is the mental part of the
7 inventive act, it must be capable of proof, such as by demonstrative evidence or by a
8 complete disclosure to another. Conception is more than a vague idea of how to solve
9 a problem. The requisite means themselves and their interaction must also be
10 comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir.
11 1897). In this case, Fratto II is relied upon for its teachings regarding the scheduler.
12 Neither the declaration nor the corroborating exhibits says anything about a scheduler.
13 Accordingly, the declaration fails to show conception of the claimed invention.

14

15 ***Conclusion***

16 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time
17 policy as set forth in 37 CFR 1.136(a).

18 A shortened statutory period for reply to this final action is set to expire THREE
19 MONTHS from the mailing date of this action. In the event a first reply is filed within
20 TWO MONTHS of the mailing date of this final action and the advisory action is not
21 mailed until after the end of the THREE-MONTH shortened statutory period, then the
22 shortened statutory period will expire on the date the advisory action is mailed, and any
23 extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
24 the advisory action. In no event, however, will the statutory period for reply expire later
25 than SIX MONTHS from the mailing date of this final action.

26
27 Any inquiry concerning this communication or earlier communications from the
28 examiner should be directed to Andrew Caldwell, whose telephone number is (703)

Art Unit: 2157

1 306-3036. The examiner can normally be reached on M-F from 9:00 a.m. to 5:30 p.m.
2 EST.

3

4 If attempts to reach the examiner by phone fail, the examiner's supervisor, Ario
5 Etienne, can be reached at (703) 308-7562. Additionally, the fax numbers for Group
6 2100 are as follows:

7

8 Fax Responses: (703) 872-9306

9

10 Any inquiry of a general nature or relating to the status of this application should
11 be directed to the Group receptionist at (703) 305-9600.

12

13

14 *Andrew Caldwell*

15

16

17

18 Andrew Caldwell

19 703-306-3036

20 November 4, 2003

21